

O. S. Levine

DESCRIPTIONS OF LAND



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TORONTO

DESCRIPTIONS OF LAND

A TEXT-BOOK FOR SURVEY
STUDENTS

BY

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INTRODUCTION

Title to land is based upon the description contained in the deed conveying it. It is not enough that the boundaries should be accurately surveyed: the land itself must be so described in the deed as to identify it without ambiguity and beyond any possible doubt. The importance of a precise description is enhanced when the boundaries are partially or wholly unsurveyed: it must then be so bounded that all the surveyors who may be employed in laying out the boundaries shall find identical lines if their operations are conducted with accuracy, and that the land lying between the lines so located shall be the particular piece of land which the parties to the deed are intending to deal with. A surveyor who is drafting a description must be able to express what he wishes to say in sentences that will admit of only one interpretation; he must have a clear conception of what he has to describe, of the surveying operations involved and of the exact meaning of the words he is using, as interpreted by judicial decisions.

The writing of descriptions cannot be governed by absolute rules. Whether a piece of land should

be described by adjoiners, or by land marks or by the courses and length of the boundaries depends upon a variety of circumstances: when in doubt the surveyor should be guided by legal advice. While it is true that most lawyers are quite ignorant of the most elementary principles of surveying, it is equally true that few surveyors, if any, are able to understand the intricacies of a complicated title. The coöperation of surveyor and lawyer is necessary.

One of the blessings of the Dominion Lands System of Survey is that descriptions generally assume such a simple form that the average surveyor should have no difficulty in writing them if he will only take the trouble to conform to a few rules.

In the pages which follow Mr. R. W. Cautley has endeavored to formulate these rules: his experience as a surveyor in active practice for a number of years and subsequently as Surveyor to the Land Titles Office at Edmonton having given him exceptional opportunities, his views on the questions involved are especially valuable.

E. DEVILLE.

PREFACE

While there are a great many standard works on the subject of conveyancing, they deal, for the most part, with the legal aspect of the subject, with which a survey student has nothing to do. At the same time all survey students in Canada are required to pass an examination on "Descriptions of Land," which is one important branch of the subject of conveyancing. I have therefore written the following text-book in the hope that it may prove useful in helping survey students to get up the subject for their examination, and—what is far more important—to realize the importance of the subject, and, by further study of it, to become capable of filling a more useful position as a surveyor in after life. Writing descriptions of land is essentially a branch of surveying and every complicated description should be drawn by an authorized surveyor. Unfortunately a great many surveyors are satisfied with obtaining proficiency in field work, as the most important and lucrative part of surveying, and do not take the trouble to become proficient in description writing, draughtsmanship, survey law or any other kindred subject once they have

obtained their commission. I venture to say that any surveyor, having just acquired his commission, who will devote a year or two to acquiring a knowledge of office work and general business methods in a department of the Government, in the land department of a railway system or in the employ of any corporation having extensive dealings in land, will find that the knowledge so obtained will open to him a wider field of opportunity that will more than compensate him for the increased earnings which he might have had by undertaking field work at once.

In studying this subject it is important to note the close connection between the practice of surveying, the writing of descriptions of land and a knowledge of the laws governing registration of land titles. It is absolutely essential that any surveyor who undertakes to write descriptions of land in any given province must first have a knowledge of the Real Property Act in force in that province.

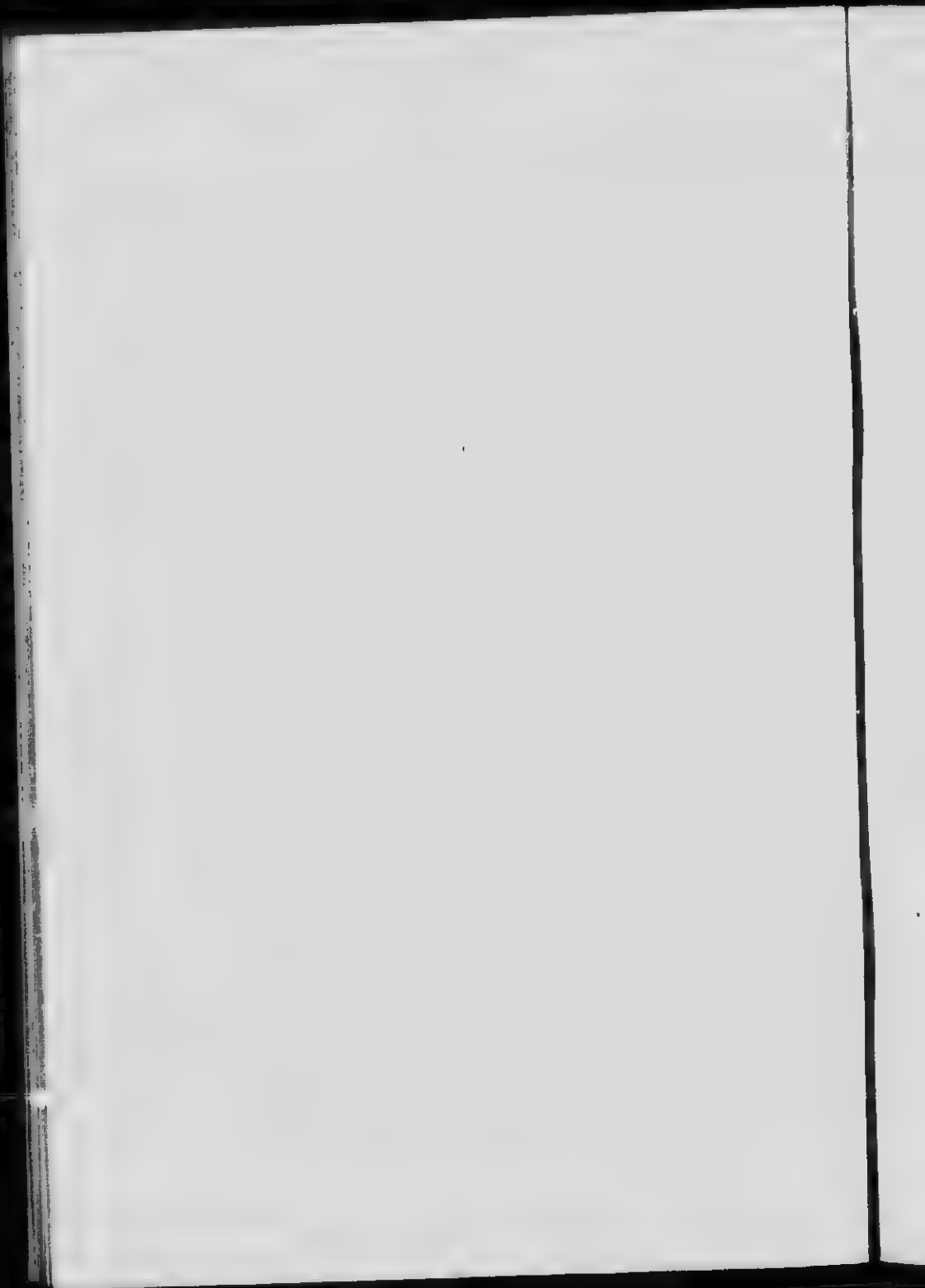
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DESCRIPTIONS OF LAND



DESCRIPTIONS OF LAND

All Descriptions of Land must be Based on Actual Survey.

1. Since the ownership of land is the most universal and, at the same time, the most permanent form of property, it follows that conveying of land constitutes the most common and important class of transactions in the everyday business of the world.

The term "conveyance of land" includes all documentary instruments purporting to deal with the ownership of land, whether by way of absolute sale or transfer, transmission, agreement of sale or lease.

Meaning of term "conveyance of land."

Every conveyance of land may, for the present purpose, be regarded as consisting of two essential parts; first, that which defines the relation between the parties to the document as to their respective interest in the land, and secondly, that which defines the actual position and extent of the land itself. The first of these two parts is a matter of drawing up a legal document, and should generally be done by a lawyer:—with it

we have nothing to do here. The second involves the description of land and forms the subject of this text book.

Description
must be based
on survey.

2. To begin with the fact must be recognised that all descriptions of land must be based upon a survey of the land in question, and the establishment on the ground of recognisable points by which the land described may be identified. Such points may be either corners of a mathematical survey marked on the ground by the establishment of posts or other survey monuments, or they may be topographical features of the country. In the former case, since the points are arbitrarily determined, it is essential that the lines which connect them should be mathematically surveyed. In the latter this is not essential for purposes of conveyancing unless it is desired to include in the conveyance precise information as to the area and measurements of the land conveyed.

Description
by natural
boundaries.

For instance, when two Indian chiefs wanted to determine the boundaries of their respective hunting grounds, they did so by reference to a range of hills and an intersecting river—points of the landscape which were patent to their eyes and capable of identification by their tribesmen—and in so doing made an actual survey of the country.

Again, after the North-West Rebellion in 1885

the Government of the Dominion of Canada issued land scrip to veterans and half breeds for a certain specified quantity of land in the North-West Territories, the position of which was undefined in the scrip and left to the choice of the holder. This scrip was exchangeable for as much real property as the number of acres mentioned in it; at the same time the land could not be conveyed until the owner of the scrip had located it according to the Government's own surveys and received a patent for it from the Crown. In other words the scrip could be sold as a chattel but the land which it represented could only be conveyed after it had been defined in reference to surveys on the ground.

Of course the above rule—that all descriptions must be based on actual survey—is capable of secondary application. It is not essential that all the corners of a parcel of land which it is desired to describe should be marked on the ground. It is not even necessary that any of them should be so marked. What is essential is that the exact position of each such corner shall be so described in relation to the position of some point that is surveyed and marked on the ground, and of some line of known direction starting from said point, that it shall be capable of being accurately and unambiguously defined on the ground. To take a very simple example, it is of course possible to

Descriptions may be based on remote survey.

describe and convey a parcel of land containing ten acres out of the interior of a quarter section by describing the ten acres in reference to any corner and adjacent side of the quarter section. As a further example it is only necessary to refer to the Dominion Lands Act 1908, which expressly provides that any quarter section shall be deemed to be surveyed when any two of the corners have been established.

Description
in reference to
lines of lati-
tude or longi-
tude.

The most extreme cases of land being described in reference to known points outside the land itself are those in which boundaries are described as unsurveyed lines of latitude or longitude. In these cases the real reference is the Greenwich Observatory in England and the local meridian at that point, although usually there are many subsidiary points and lines of reference established by previous survey much closer to the projected line than Greenwich. For instance, the North boundary of the Provinces of Saskatchewan and Alberta has been defined as the 60th parallel of North latitude, and the West boundary of Alberta, is, in part, the 120th Meridian of West longitude, none of these being actually defined on the ground. In these cases, however, the rights of possession guaranteed by a title based on a line of latitude or longitude cannot be fully enjoyed by the owner, or enforced against possible trespass, until such time as the line is actually

defined on the ground. The story of the Hudson's Bay Company's Post on the Yukon River affords a good illustration of this point. Many years ago the common boundary between that part of the North-West Territories now known as the Yukon Territory and Alaska—a territory of the United States—was defined as the 141st Meridian of West longitude. In 1847 the company established a trading post at Fort Yukon at the Junction of the Yukon and Porcupine Rivers, but, when the first surveys of the country were made, it was found that the longitude of Fort Yukon was approximately $145^{\circ} 20'$ West, and its latitude $66^{\circ} 34'$ North, so that the fort was about 120 miles due West of the British American boundary, and within American Territory. As a result the company's post was moved Easterly to a point on the Porcupine River which was East of the boundary, and was named Rampart House, in 1869 or 1870.

Before leaving this phase of the subject it may be stated as a fact that, in all ordinary cases, and provided it is correct in other respects, a description of land is good or bad in inverse ratio to the distance of the land described from the points of reference in regard to which it is described. In other words, that description is best in which the point of commencement at least is referred to as being actually defined on the ground, and the

Descriptions
good or bad
according to
proximity of
survey on
which they
are based.

worst form of description is that in which the connection between the point of commencement of the land described and the points of reference in relation to which it is described is long, complicated and obscure.

The following reasons may be given for the above statement:—

(a). A description should always be made as simple and direct as possible.

(b). A description does not fulfil all its purposes until the land described has been identified on the ground, and although a description based on a survey at some distance from the land described may be perfectly sufficient for the purpose of conveying the said land it necessitates a survey before the land can be identified and is, to that extent, incomplete.

Description
bound by ac-
tual position
of points on
ground.

(c). A description of land the boundaries of which are described as being between certain posts or other monuments on the ground is bound by the actual position of such posts or monuments, and thus any errors of distances or bearings given in the written description are absorbed by the survey on the ground.

**Descriptions Should Refer to Plans of Survey
Which are of Record, as well as to the
Survey Itself.**

3. Having seen that all descriptions of land must be based on actual land surveys—near or remote—it is very important to realize that descriptions should always refer to a plan of the survey registered in some public office of the State, as well as to the actual lines and monuments on the ground. There are several reasons for this, of which the following are perhaps the most important:—

(a). A survey on the ground cannot be brought within the comprehension of any person interested in the land, except the surveyor who has made the survey, until it has been plotted in plan form on a convenient scale. If you take a man out on the prairie and tell him that you are standing at about the centre of a piece of land having certain measurements and containing a specified acreage, he can only be convinced in so far as his faith in your knowledge of the facts and your personal integrity will carry him. If, on the other hand, you are able to show him a plan of the same land, with the various measurements shown on it and bearing on its face the affidavit of a State au-

Descriptions
must refer to
plan of
survey.

Reasons why
descriptions
must refer to
plan of sur-
vey.

thorised land surveyor and the signatures of the owner and the public official whose duty it is to keep such plan as a matter of public record, he is at once able to realize the position and extent of the land for himself.

(b). It is impracticable for all the principals, or their agents, who have to deal in land to visit any given parcel of land, or to have it resurveyed, every time they desire to ascertain anything in regard to it.

(c). A plan duly registered in a place of public record tends to do away with any chance of the actual survey on the ground being tampered with by interested parties.

(d). Many surveys become obliterated altogether in process of time, either by decay or uprooting of the monuments or by fire, so that a conveyance of land in which the land is described in reference to posts planted in the ground would, if such posts were entirely obliterated, often become valueless, whereas any proper plan of survey contains information from which it would be possible to reconstruct the survey on the ground in such a case.

(e). No registrar of land titles, under the Torrens system of land titles which obtains in all the Western Provinces of Canada and to a certain extent in Eastern Canada, can properly issue certificates of title based on facts of survey

which are not a matter of record in his own office. Since monuments on the ground can never be matters of office record it follows that a plan of every survey must be made and registered before such survey can be accepted by a registrar as an authentic fact on which to base descriptions of land for registration purposes.

The foregoing paragraphs may be summarized by stating that all references to surveys to be made in descriptions of land should be made to plans of such surveys in order that they may be intelligible, accessible for purposes of verification, better established and valid for registration.

4. The description of a surveyed parcel of land which is based on, and made subject to, a plan of the survey is described partly in the written words of the description and partly by the lines and measurements shown on the plan. A sufficient plan of survey constitutes a graphically drawn description of the parcels of land shown on it. A graphically drawn description possesses these advantages over a written description, (a) that the more intricate points of the survey are rendered capable of being visually realized by inspection, and (b) that the mathematical process of plotting the survey on a plan serves as a check against errors which may easily be made and undiscovered in a written description.

Advantages of a plan of survey considered as a description.

Definition of
a "sufficient"
plan of sur-
vey.

5. A plan of survey that is "sufficient" for the purpose of conveying land by reference to it may be defined as having the following attributes:

(a). That it is a plan of an actual survey made upon the ground and marked on the ground in such a way that the parcels of land surveyed may be capable of identification.

(b). That it is made by a surveyor authorized by law to make such a survey.

(c). That the survey and plan are made in accordance with the provisions of any law affecting the making of such survey or plan, as to the method of survey employed, the marking of the survey on the ground and the execution of the plan by the surveyor, the registered owner and any other person required to execute the same under the said provisions.

(d). That the plan is of record in the public office wherein such a plan is required to be registered by the law in that behalf.

Plans and How to Refer to them in Descriptions of Land.

DEPARTMENTAL PLANS

6. The most important class of plans are those issued by the departments of the Government of the original surveys of different parts of Canada. Importance as representing original surveys. The great importance of these plans arises from the fact that they are the plans of the surveys on which all original grants from the Crown have been based, and therefore on which all subsequent title to land depends. Owing to the fact that the original surveys were not always made carefully, it has been found necessary in a great many instances to have certain sections of the country resurveyed, and new plans of the corrected survey issued, so that it is quite usual to find two, and even three, departmental plans of the same township having different measurements and acreages shown on them.

All these plans are of record in the office of the Department by whose authority they were issued, Where of record. and also in the Land Titles Office for the district in which the land occurs. They are usually identified in descriptions that are based on them by How identified.

reference to the date of the official approval of the survey which they represent.

Examples.

Two examples are given below of the way in which departmental plans may be referred to in descriptions of land:—

(a). The whole of the South East quarter of Section 1 in Township 54 and Range 23 West of the 4th Meridian in the Province of Alberta in the Dominion of Canada containing 160 acres more or less and as the same is shown on a plan of survey of said township approved and confirmed by the Surveyor General of Canada at Ottawa on the 14th day of May, 1894, which plan is of record in the Department of the Interior at Ottawa and in the Land Titles Office for the North Alberta Land Registration District at Edmonton in said Province.

(b). The whole of the fractional South West quarter of Section 6 in Township 51 and Range 24 West of the 4th Meridian in the Province of Alberta in the Dominion of Canada containing 39 acres more or less and as the same is shown on a plan of survey of part of the said township being a subdivision of part of the Papaschase Indian Reserve made by A. Nelson, Dominion Land Surveyor and signed by him at Ottawa on the 29th day of March, 1892, which plan is of record in the Department of Indian Affairs at Ottawa and in the Land Titles Office for the North Alberta

Land Registration District at Edmonton in said Province.

NOTE.—The second form is not so good as the first, but it will be found that some of the earlier plans were admitted to record without endorsement by the head of the department, and example (b) is supposed to represent a case of this kind.

SUBDIVISION PLANS

7. A second class of plans which are very important, because of the value of the land which they represent and the great number of conveyances that are based on them, is that of City or townsite plans of subdivision.

The object of these plans is to facilitate the transaction of all kinds of business having to do with city or town lots. Object of subdivision plans.

These lots consist of small parcels of land which it would not be practicable to deal with as independent parcels described in reference to the outlines of the original land survey on account of their number, the number of transactions that take place in regard to them and the fact that it is constantly necessary to identify the position of the land occupied by each lot.

It is quite usual for a quarter section, containing 160 acres, to be subdivided into 1,000 town lots, with streets and lanes. This often results

in thousands of persons acquiring an interest in small portions of the quarter section, either as owner, mortgagee, lessee or tenant, and in endless complications of title.

Subdivision plans specially provided for in Real Property Acts.

8. In order to meet the foregoing conditions all Real Property Acts contain provisions that have the following general effect, although they vary considerably in scope and treatment:

(a). That an owner desiring to create a town-site on his property may register a plan of subdivision of the same, showing the blocks and lots designated by numbers or letters, the position of streets, lanes, parks, etc., and all necessary measurements.

(b). That upon the registration of such a plan he may proceed to sell or otherwise deal with the town lots shown thereon by reference to the registration marks of the plan and the numbers or letters shown on the plan to designate such lots.

Registration of subdivision plan causes change in form of title.

9. On the registration of a plan of subdivision under the Torrens system of land titles the owners' title is changed in form from a title based on the original land survey to a title to lots and blocks based on the plan of subdivision. For instance in the case of a man owning a quarter section of land within the limits of an incorporated city and presenting for registration a plan of subdivision of the entire quarter section, his title to the quarter section—as such—would be cancelled in

full and he would receive in exchange a new title for all the lots shown on the plan. It follows that descriptions of lots, or parts of lots, in a city or townsite must always be based on the registered plan of subdivision, and that, after the registration of such a plan, it is wrong to attempt to describe them in any other way. Take the supposed case of Lot 1 in Block 13 situate in the town of Orwell and being part of the South East quarter of Section 1 in Township 46, Range 23 West of the Fourth Meridian as shown on a plan registered in the district land titles office under number 2079 in Day Book Q. A good and sufficient description of the above lot would be as follows:— "Lot numbered One (1) in Block numbered Thirteen (13) in the Town of Orwell in the Province of Alberta as the same is shown on a plan of survey registered in the Land Titles Office for the North Alberta Land Registration District under number 2079 in Day Book Q."

Once a plan of subdivision registered all property shown on it must be described in reference to it.

But suppose it is merely described as "Lot numbered One (1) in Block numbered Thirteen in the Town of Orwell being part of the South East quarter of Section One (1) in Township Forty-six (46), Range Twenty-three (23) West of the Fourth (4th) Meridian," this is insufficient for the following reasons:—

(a). There is no certificate of title in existence which corresponds with and can be identified with

the terms of the description. The description contained in the Certificate of Title for this lot is based on plan 2079 Q, which defines its size and relative position.

(b). There may be, and experience shows that there frequently is, an unregistered plan which shows Lot 1 Block 13 to be in an entirely different position and which, nevertheless, was the plan which the parties to the sale or agreement had agreed upon.

EXPLANATORY PLANS

Purpose of explanatory plans.

10. A third class of plans are those which are drawn for the express purpose of accompanying and elucidating particular descriptions of land, and which are attached to and form part of such description. For the purpose of distinguishing them from departmental plans or subdivision plans, they will be referred to as "explanatory plans."

Provided for in Real Property Acts.

11. Most of the Real Property Acts in Canada provide that a Registrar may require any person desiring to register an instrument containing a complicated description of land to furnish him with an explanatory plan, signed by an authorized surveyor, and to make the description in the instrument subject to the plan by embodying a direct reference to the plan in the instrument itself.

12. The object of an explanatory plan is to attach to a description which is not of a nature to be capable of comprehension by the Registrar, or his staff, the weight of evidence afforded by a plan of survey certified to be correct by a surveyor whom the Government has found worthy to receive a Commission as such from the Crown and who has done the work necessary to prove the correctness of the description.

Effect of explanatory plans.

13. An explanatory plan, and the survey which it represents, add a great deal to the cost of conveyancing, so that there is a constant tendency on the part of lawyers to save their clients money by evading the necessity of having a plan made. The question therefore arises as to what constitutes a complicated description. As the answer to this question generally lies in the discretion of the Registrar, it is only possible to consider the subject in a general way. Any description may be said to be complicated, the facts of which cannot be grasped when it is read through by a man who is accustomed to such work. Further, any description in which it is necessary to make a trigonometrical calculation in order to prove the correctness of the various courses, or to plot the said courses in order to prove the correctness of the acreage specified, is complicated within the meaning of the term as applied here.

Definition of a complicated description.

14. Explanatory plans are not registered as

How registered.

independent instruments, as are plans of subdivision, but are merely attached to the instrument of which they are really a part, and must be referred to accordingly. For example:—"— and as shown colored red on a plan of survey attached to an instrument registered in the Land Titles Office for the ——— Land Registration District under number ——— in Day Book ———."

15. As explanatory plans are intended to accompany a description of a particular parcel of land it only becomes necessary to refer to them in descriptions affecting the same land. That is they are plans of special record affecting one particular parcel of land instead of being plans of general record affecting many different titles, as in the case of a departmental plan or a plan of subdivision. Moreover, whereas a departmental plan is usually a plan of an original survey, and a subdivision plan is one that has been accepted in lieu of such plan of original survey, so that, in either case, all titles which are based on them depend directly on the plan itself and the survey which it represents, this is not the case with explanatory plans.

Explanatory plans only a secondary base of description.

Explanatory plans can only be used to accompany a description of a part of one of the larger parcels shown on a plan of general record, and any title issued on such a description depends,

first, on the plan of general record, and, secondarily, on the explanatory plan.

Hence it is sometimes held that a description accompanied by an explanatory plan must include in the text a full written description of the lands by metes and bounds, as well as the references to the plan of general record and the explanatory plan, as in example (a) given below. On the other hand it is very common practice to make the description depend directly on the explanatory plan, as in example (b).

My own opinion is that either form is correct providing the explanatory plan is a plan of actual survey, duly certified by an authorized surveyor and sufficiently executed by the registered owner of the land.

The advantage in Form (a), lies in the fact that a title issued on, and containing, such a description is, to a large extent, self contained and complete, whereas a title issued in Form (b) cannot be understood without a certified copy of the explanatory plan or an examination of the original at the land registry office.

The advantage in Form (b) is that it does away with any chance of a discrepancy between the written description and the plan—a serious error which is by no means uncommon.

(a). "All that part of the South East quarter of Section twenty (20) in Township Forty-seven

(47) Range Twenty-one (21) West of the Fourth (4th) Meridian as the same is shown on a plan of survey of the said Township approved and confirmed by the Surveyor General of Canada at Ottawa on the 14th day of May, 1894, of record in the Department of the Interior at Ottawa and in the Land Titles Office for the North Alberta Land Registration District at Edmonton in the Province of Alberta which may be more particularly described as follows:—Commencing at an iron post planted at a point on the Southerly boundary of said quarter section distant six hundred (600') feet more or less Westerly from the South East corner thereof, Thence Northerly and parallel to the Easterly boundary of said quarter section six hundred and sixty (660') feet more or less to an iron post planted,

“Thence South forty-five degrees and no minutes more or less West nine hundred and thirty-three decimal point two (933.2) feet more or less to an iron post planted on said Southerly boundary,

“Thence Easterly and following said Southerly boundary six hundred and sixty (660') feet more or less to the point of commencement,

“The part herein described containing five (5) acres be the same more or less and as shown colored red on a plan of survey of the same made by Alfred Jones, Dominion Land Surveyor and attached hereto.”

(b). "All that part of the South East quarter of Section Twenty (20) in Township Forty-seven (47) Range Twenty-one (21) West of the Fourth (4th) Meridian as the same is shown on a plan of survey of the said Township approved and confirmed by the Surveyor General of Canada at Ottawa on the 14th day of May 1894 of record in the Department of the Interior at Ottawa and the Land Titles Office for the North Alberta Land Registration District at Edmonton in the Province of Alberta containing five (5) acres be the same more or less and as lettered "X" and shown colored red on a plan of survey of the same made by Alfred Jones, Dominion Land Surveyor and attached hereto."

NOTE.—The two above examples are intended to be embodied in an original transfer of the parcel described. In the title that would issue, and in all subsequent transfers, it would be necessary to substitute for the final word "hereto" the following—"to an instrument registered in the said Land Titles Office under number — in Day Book —."

16. When referring to a registered plan or other instrument in a description of land it is of the utmost importance that the reference shall be made in terms that shall absolutely identify the plan or instrument referred to. To do this it is necessary to have some knowledge of the system

Important that reference to plans shall identify same.

System of
registration
discussed.

under which instruments are registered in different registry offices. The most general system of registration is that in which instruments are registered according to the number given them in the current day book or journal, and the number or letter given to said book to distinguish it from those that have already been filled and those of the future. For instance, take a day book containing room for 8,000 entries and known as Day Book "Q." Each instrument that is registered is given the next unused number—say 3679—and henceforth becomes known for all purposes of registration as "instrument registered in the Land Titles Office for the ——— Land Registration District under number 3679 in Day Book 'Q.'" or for informal reference, "plan, or document, "3679 Q." A very common mistake in ordinary practice is reference to an instrument by its registered number alone, as "Instrument registered, etc., under number 3679." Since it will be seen that there are as many instruments registered in any registry office under any given number as there are completed day books, it is unnecessary to further establish the fallacy of this practice, particularly when it is understood that instruments are indexed and filed for reference in a registry office, in sequence of numbering, under the letter or number used to designate the particular day book that they were registered in.

17. In cases where it is practicable to see the Certificate of Title of, or including, the land which it is desired to describe, it is almost always good practice to follow the actual wording of the description contained in the Certificate as far as the same is applicable. For one thing, except in the comparatively few cases where there is something radically wrong about it, it will be accepted without question by the registrar.

(Good practice to copy existing title when describing same land.)

RAILWAY PLANS

18. There is a fourth class of plans which may be referred to as Railway Plans, being plans of surveys of railway right of way on which descriptions of land, and titles to the same, are based. Railway plans were called into existence by the provisions of various Railway Acts which have been passed by the Dominion and Provincial Legislatures. The object of these plans, as plainly contemplated in the said Acts, is to give public notice of intention on the part of the promoting railway companies, first to the Government whose approval and sanction are necessary before the privileges granted to the company under its charter can be given effect to in respect of the proposed line, and secondly to the owners of all land through which the line passes. With a view to promoting the second of these objects, it is

Nature of railway plans.

Purposes of railway plans.

provided that railway plans shall be deposited in the land registry office for the district in which the land affected occurs. It followed that, because these plans were of record in the local land registry offices, and because there was no other available base of description that was of record, they came to be generally recognized and accepted as a base of description for title to railway lands.

Why railway plans used as basis of title. Unfortunately the class of plans made under the provisions of the Railway Acts and approved by those who administer the said Acts as being sufficient for the purposes thereof, lack the essential characteristics which any plan intended to be used as a base of description for land titles should possess. In the first place such a railway plan is only a plan of survey, in so far as the actual right of way is concerned; in respect to the land boundaries shown on such a plan it is merely a sketch, most of the ties shown on land boundaries, from the intersection of the centre line of the right of way to alleged corners of the parcel of land, being derived from calculation based on the assumption of a theoretically perfect original survey, or having been carelessly and incorrectly made. The serious feature of the above is that the survey of the right of way itself is not posted or marked on the ground in any way, and its existence as a matter of record depends on the spurious ties given on the plan.

Inferior character of some railway plans.

Wherein railway plans not "sufficient."

NOTE.—Just it should appear that this statement contains an exaggeration, I may say that 3 years experience as a surveyor to a land titles office has shown me that whenever a subsequent and carefully made survey of land abutting on a railway right of way has been made, and a plan of same presented for registration, fully one half of the land ties shown on the railway right of way plan have been found to be incorrect—often grossly so.

In the second place the survey represented by such a railway plan is very rarely made by an authorized surveyor, but, generally, by a railway engineer whose whole interest in the work is centred in the actual right of way and who cares nothing whatever about the land connections thereof.

In the third place the Government officials who pass upon railway plans can only require that they shall fulfil the conditions prescribed in the Railway Acts, which do not contemplate their being used as a basis of title.

As a result, there are innumerable faulty descriptions contained in right of way titles, which will all, eventually, have to be rectified at an immense cost. In recognition of this fact the Governments of the Provinces of Manitoba, Saskatchewan and Alberta have passed legislation refusing to issue titles to railway right of way until plans of a posted survey of the right of way, made by an

authorized surveyor in accordance with the provisions of the Provincial Surveys Acts, or, in the case of Manitoba, the Real Property Act, have been registered in the proper land titles office.

How registered.

19. Since railway plans are plans of general record that affect the titles to all lands through which the railway is shown to pass, they are registered as independent instruments and should be identified in descriptions of right of way by reference to the registration marks of the plan.

Owing to the fact that railway plans are deposited in land titles offices as matters of record with a view to their future use as bases of description whenever the railway company shall desire to acquire title to the right of way across any particular parcel of land shown thereon, and the further fact that they do not in any way affect the title to such land until so used, it is frequently the case that they are not registered in the common register of instruments which have a direct and immediate effect on existing land titles, but are registered in a special register. Before undertaking to draw descriptions of railway lands, therefore, it is necessary to make careful enquiry as to the correct designation of the railway plan on which it is proposed to base the description.

The Use of Natural Boundaries in Descriptions of Land.

20. Natural boundaries include the high water mark of seas, lakes, or rivers, the centre line of creeks and the foot or the top of hills.

Definition of term "natural boundaries."

21. In the case of lands fronting on seas, lakes or considerable rivers the high water mark is the only proper boundary to adopt, the object being to ensure that the land shall include the water frontage and the high water mark being the only possible boundary having flexibility enough to allow for changes in the actual water front due to encroachment or recession of the water. It is bad practice to attempt to define the high water mark by mathematical survey in such a way as to preclude any change in the position of the boundary whatever the water may do. Any survey of a high water mark should be made only for the purpose of plotting the same or computing the area of land fronting on it, and not with any idea of rigidly defining the boundary of the land. For instance, let us consider the case of a fractional quarter section of land, containing 100 acres and fronting on a navigable river with a swift current which is constantly cutting away its

High water mark of water frontage only proper boundary to adopt.

H. W. M. should not be rigidly defined by survey.

Example.



banks on the one hand or forming new land on the other. Let us assume that the high water mark was accurately determined at the time of survey and that the said high water mark, tied in by offsets from properly connected traverse lines, was made the boundary of the quarter section as a surveyed line. First let us suppose that the river encroaches on the quarter section and cuts away 20 acres from it. This 20 acres, having become part of the bed of a navigable river, reverts to the Crown. Thus we have an existing title for 100 acres of land while there are only 80 acres within its described boundaries. Secondly let us suppose that the action of the river causes 20 acres of land to form in front of the quarter section. The result is that, while the original 100 acres are undisturbed, the land has lost its character as water frontage and, with it, much of its value. If the high water mark of the river, without any attempt at surveyed definition, had been used in the description the title would, at different times, have included anywhere from 80 to 120 acres and the real intention of the original grant would, at all times, have been fulfilled.

Area of land
fronting on
water should
be described
as "approximate."

22. Owing to the fact that the area of land fronting on water is liable to actual change in extent, any specific acreage given in a description of, or a title to, such land should always be qualified by the use of the word "approximately."

For instance, "and containing approximately 100 acres be the same more or less," or "and containing approximately 100 acres as the same may be or may become."

It may be argued that the use of the words "more or less" is sufficient to cover any possible variation of acreage, due to whatever cause. On reflection, however, it will appear that the words "more or less" are only intended to cover any variation of acreage due to error in computation of the area, and cannot be held to cover any actual change in the area itself.

Use of words
"more or
less" as ap-
plied to
acreage.

23. A high water mark that is sharply defined is, as has been said, a very good natural boundary, but there is an immense amount of land which fronts on marshes that intervene between that which is indubitably land and that which is indubitably water. In such cases it is often impossible to define the high water mark with any degree of precision. Even so it is all the more necessary to use the term "high water mark" and to rely on its flexibility of meaning under different circumstances.

Ill defined
high water
marks

Any specification of acreage in a description of such a parcel should be:—

- (a). Expressed in terms giving the greatest possible latitude, or
- (b). Omitted altogether, or
- (c). Described as containing so many acres of

high land "together with all the low lying land lying within the above described boundaries,"—of which "the high water mark" is one.

Centre of
creek as nat-
ural bound-
ary.

24. The centre line of a creek may be a very good natural boundary in cases where the creek has a well defined channel and is of a size to ensure its permanency.

Good in cases
where land is
of small value.

Even a small creek may make a good common boundary between two parcels of agricultural lands which are of small value, and there may be good reasons for adopting such a creek as a boundary which, while contrary to the best principles of good conveyancing, should nevertheless be taken into consideration. For instance, take the case of a quarter section with a creek running diagonally through it and having steep rough banks. From the point of view of working the land economically the two halves as divided by the creek would have a very much greater value than if they were divided by a straight line leaving small corners of arable land on either side of the creek.

Why creeks
should not be
adopted as
boundaries
in cities.

In a city or town, however, the water which flows in a small creek will eventually be absorbed into the municipal drainage system, while the bed of the creek will become diverted, excavated, filled in or otherwise obliterated. In the City of Winnipeg litigation over the question of what had been the true position of a small creek of this

kind, the position of which had been obliterated, cost hundreds of thousands of dollars, and the same thing has occurred in regard to other cases elsewhere.

Hence it may be accepted as a general rule General rule. that no small creek should ever be adopted as a common boundary between two parcels of land which have, or appear likely to have, a value above that of agricultural land.

25. The use of the foot or top of hills as natural boundaries should always be avoided, on account of their lack of definition and the possibility of change in their position, owing to slides or erosion by water. It is often desirable to establish the foot or top of a hill as a land boundary, and this may very properly be done but such a boundary must in all cases be established as a surveyed line. For instance, the mining regulations which were in force in the Klondike gold mining camp defined the most valuable class of claims—creek claims—as extending from “base to base of hill.” As the country is of glacial formation, and what may at one time have been a sharply defined base of hill is generally overlaid with from 10 to 60 feet of slide matter, and as, moreover, the values involved were often enormous, the result was an endless succession of law suits on the interpretation of this particular definition. The reason why the law suits were endless was that, owing to the

Hills must never be adopted as natural boundaries.

Example.

impossibility of applying the theoretical provisions of the regulations to the actual conditions, each case had to be decided on its own merits and it was not possible to create precedents. In their efforts to render equitable decisions the Courts were obliged to listen to, and give consideration to, fictitious arguments as to where the base of the hill ought to be, rather than where it actually was.*

Example.

To take a more ordinary case: Some years ago the Northerly 40 acres of Lot 27 in the Edmonton Settlement was sold, described as follows:—"All that portion of Lot 35 in the Edmonton Settlement in the Province of Alberta containing 40 acres more or less and lying to the North of a line drawn parallel to and distant three feet Southerly from the high bank of the North Saskatchewan River." As the bank referred to is by no means sharply defined it is difficult to imagine a more perfect example of a bad description. After a time the owners of the Southerly portion subdivided their land and the surveyor employed defined the above boundary by a straight line

* I distinctly remember hearing a well known member of the Dominion Geological Survey give evidence to the effect that, in his opinion, the "base of the hill" was half way up an adjacent mountain, basing his opinion on the probable position of said base of hill during the Pliocene Period.

boundary of two courses. The plan of subdivision was refused registration until the description was interpreted by an order of the Court, after all interested persons had been heard in the matter. In this case, therefore, a description based on the position of a hill top was found to be insufficient to define the boundary of the land described for purposes of legal occupation.

The Use of the Words "More or Less" in Descriptions of Land.

Object of using words "more or less."

Surveying only a relatively exact science.

26. The words "more or less," when applied to a distance given for one of the courses in a description of land, are intended to cover any variation in such distance from that given which may appear on re-measurement or re-calculation.

Theoretically speaking surveying is an exact science, but in practice it is only relatively so. Elements of personal exactitude and skill in making surveys, variations of temperature, slight inherent errors in the manufacture of measuring tapes and differences caused by variation of tension in using them, all have their effect in making field surveying only relatively accurate. In describing a course between two actual points on the ground there can, of course, be only one correct distance, but the conveyancer is not justified in assuming that the distance which the surveyor measured between these two points, and put on his plan, is exactly correct. Nevertheless it is the actual distance between the two points that he desires to describe, and he is not concerned that the distance given in the conveyance does not agree with such actual distance within the limits

of precision of the survey. Hence the use of the words "more or less." For instance, let us take the following very simple example:—"Commencing at a post planted; Thence due North 1,000 feet more or less to an iron post and mound." Example.

In the above example suppose the surveyor to have made an error in chaining the distance and that this distance is in reality 1004 feet. What is it that the conveyancer desires to describe? Is it 1,000 feet of land, or the actual distance between the two posts? Why, the actual distance of course. But the description describes the course in two ways—first as being the distance between the two posts—and secondly as being 1,000 feet, (which latter is found by later and more accurate measurement to be wrong in that it is 1,004 feet instead of 1,000). Hence there is a confliction of evidence in the description as to the length of this course, which is overcome by the use of the words "more or less," but which, if the said words were omitted, would remain unaccountable.

27. The rule is, therefore, that "Every distance given in a description of land as representing the actual distance between two points established on the ground should be qualified by the words 'more or less'." Rule when words "more or less" should be applied to distances.

28. In the two preceding sections we have dealt with descriptions of surveyed parcels of land, but parcels of land which have not been sur- Example.

veyed are frequently described by metes and bounds, and referred to some more or less remote survey. The following may be taken as an example:—"Commencing at a point on the Southerly boundary of the South East quarter of Section 20 in Township 46, Range 23 West of the Fourth Meridian distant 660 feet Westerly from the South East corner thereof; Thence Northerly and parallel to the Easterly boundary of said quarter section 660 feet; Thence Westerly and parallel to said Southerly boundary 660 feet; Thence Southerly and parallel to said Easterly boundary 660 feet; Thence Easterly and following said Southerly boundary 660 feet to the point of commencement."

To qualify any of the distances given in the above example by the words "more or less" would be to render the description indeterminate and absurd. All the said distances, being purely theoretic and not subject to discrepancies of survey on the ground, are, and must be, as exact as the science of mathematics itself.

Rule when words "more or less" must not be applied to distances.

29. The rule is, therefore, that "Every distance given in a description of land which is not subject to the position of points established on the ground must never be qualified by the words "more or less."

The Use of Astronomical Bearings in Descriptions of Land.

30. The use of bearings in describing boundaries of land is employed to define the direction of such boundaries from their previously described starting point in relation to the meridian passing through such point, or such other meridian as they may be referred to.

Object of use
of bearings in
descriptions.

31. The reason why it is usual to describe the direction of lines of survey by bearings rather than by angular measurement with some contiguous line of the survey is twofold. First, because to describe the direction of the lines of a survey in reference to the direction of the preceding course must always be cumbersome and give more occasion for errors, both on the part of the person making the description and those who are to interpret it, than if the direction of description by bearings were employed. Secondly, because the method of description by bearings possesses the great advantage that the description of each line is independently described in regard to a constant line of reference having a positive and a negative direction:—to wit, the local astronomical meridian, of which

Why bearings
preferable to
angular
measure-
ments.

the North Pole may be regarded as the positive end and the zenith of the point described as the negative end. This tends to the utmost facility and lucidity of description because each line of which the bearing is given in a description represents a definite and positive direction to the mind's eye of any person reading such description.

Example.

As an instance of this, and in order to show how difficult it is to make a clear description in which the method of angular measurement is used to define the direction of the various courses, the two following examples are given, in which the same parcel of land is described, (a) by employing bearings to define the direction of its boundaries, and (b) by employing angular measurements for the same purpose. The preamble, which is the same for both descriptions, is as follows:—

“All that portion of the North East quarter of Section 23 in Township 46, Range 23 West of the 4th Meridian in the Province of Alberta as the same is shown on a plan of survey of the said Township approved and confirmed by the Surveyor General of Canada at Ottawa on the 4th day of May, 1894, which plan is of record in the Department of the Interior and also in the Land Titles Office for the North Alberta Land Registration District which may be more particularly known and described as follows:—”

(a). “Commencing at an iron post planted at a

point distant 10.73 chains more or less on a bearing of North $73^{\circ} 25'$ West from a point on the Easterly boundary of said quarter section distant 14.02 chains Southerly from the North East corner thereof; Thence North $73^{\circ} 25'$ West a distance of 12.00 chains more or less to an iron post planted; Thence South $28^{\circ} 02'$ West a distance of 14.00 chains more or less to an iron post planted; Thence due East 16.00 chains more or less to an iron post planted; Thence North $13^{\circ} 06'$ East 9.18 chains more or less to the point of commencement the whole containing three and eighty-hundredths acres be the same more or less and as shown red on the plan of survey attached hereto."

(b). "Commencing at an iron post planted the position of which may be described as follows:— Commencing at the North East corner of said quarter section: Thence Southerly and following the Easterly boundary of said quarter section a distance of 14.02 chains to a point; Thence in a straight line making a deflection angle to the right with the last described course of $106^{\circ} 35'$ a distance of 10.73 chains more or less to said iron post and point of commencement; Thence continuing in the same straight line as that described between said point and iron post a distance of 12.00 chains more or less to an iron post planted; Thence in a straight line making a deflection

angle to the left with the last described course of $78^{\circ} 38'$ a distance of 14.00 chains more or less to an iron post planted; Thence in a straight line making a deflection angle to the left with the last described course of $118^{\circ} 02'$ a distance of 16.00 chains more or less to an iron post planted; Thence in a straight line making a deflection angle to the left with the last described course of $76^{\circ} 54'$ a distance of 9.18 chains more or less to the point of commencement, the whole containing three and eighty-hundredths acres be the same more or less and as shown colored red on the plan of survey attached hereto."

Quadrant
bearings
should be
used.

32. For general use in descriptions of land it is better to adopt quadrant bearings than bearings from the North meridian from 0° to 360° through East, South and West and back to North again. The reason for this is simply that quadrant bearings are more commonly understood than the other, and descriptions should always be made as simple and universally intelligible as possible.

33. In theory, all bearings given in a description of land as representing the actual direction of a line between two points established on the ground should be qualified by the words "more or less," applied to the number of degrees and minutes given in the bearing, in order to allow for possible discrepancies of survey and for the same reasons

given in section 24 having reference to the qualification of distances between similar points. For instance, "Commencing at a post planted; Thence North $41^{\circ} 33'$ more or less West 1,000 feet more or less to an iron post and mound."

However, it is not usual to find this rule observed, even in the best practice, and the reason for this may be found in the fact that an astronomical bearing, when used in a description of land, cannot be considered to absolutely govern the direction of the line described, but only to serve as a close indication of it. The principal reason for this is that the bearing of a line is usually given without specified reference to any particular meridian; it therefore fails to define the direction of the line, unless it is assumed as implied that the bearing is referred to the meridian of the point of commencement, which assumption would not, as a rule, be justified by the facts. For instance, suppose the bearing of a line to be given as North $45^{\circ} 00'$ East, and that subsequent observation from the point of commencement reveals the fact that the actual bearing of the said line is North $45^{\circ} 05'$ East. It is nevertheless a fact that the bearing of said line is North $45^{\circ} 00'$ East if referred to the meridian of a point about five miles East of the point of commencement. As a matter of fact, most of the bearings which occur in descriptions of land are derived

Bearings do not always absolutely govern direction of lines.

from those shown on the departmental plans of the original surveys, rather than from observation. Further, the bearings shown on such departmental plans, with the exception of those shown for the central meridian of townships, are not themselves true astronomical bearings, but are referred, in accordance with a convention of the Dominion Lands Surveys Act, to said central meridian. It follows that the bearings given in descriptions of land would hardly ever bear the test of verification by observation, although most of them would be shown to be approximately correct, and that the whole question of the use of bearings in descriptions is established on a less accurate basis of survey than that of the use of distances.

Rule when bearings given in descriptions should be qualified.

34. In a description of land in which the bearing given for any line, which is also defined as lying between two points established on the ground is referred to a specified meridian, the direction of the line is defined in two ways, and such bearing should be qualified by the use of the words "more or less" applied to the number of degrees and minutes given in the bearing.

Showing how bearings may be referred to special meridian.

35. The bearings of lines of survey may be referred to a specified meridian in descriptions of land in various ways, of which two are shown in the following examples, for both of which the following preamble will serve:—

Example.

"All that portion of the North East quarter of Section 23 in Township 46, Range 23 West of the 4th Meridian in the Province of Alberta as the same is shown on a plan of survey of the said Township approved and confirmed by the Surveyor General of Canada at Ottawa on the 4th day of May, 1894, which plan is of record in the Department of the Interior and also in the Land Titles Office for the North Alberta Land Registration District which may be more particularly known and described as follows:—"

(a). "Commencing at the South East corner of said quarter section; Thence North $45^{\circ} 00'$ more or less West assuming the Easterly boundary of said quarter section to have a bearing of due North a distance of 1,000 feet more or less to an iron post planted."

NOTE.—In view of the fact that this book is intended to be a text book for the guidance of practical survey students, I wish to say that, although I feel that the rule prescribed in section 34 is a logical and unavoidable deduction in the theory of description, it is one that is very rarely observed in common practice, and I do not know of its ever having been insisted upon by any Board of Examiners or Master of Titles.

(b). "Commencing at the South East corner of said quarter section; Thence North $45^{\circ} 00'$ more or less West which bearing and all other

bearings given in the following description are derived from the bearing of the Easterly boundary of said quarter section as the same is shown on said plan a distance of 1,000 feet more or less to an iron post planted."

When proper to describe land as "North half" of original parcel.

36. It is very usual in common practice to find land described as "the North half," or "the East half," of a parcel of land. When the boundaries of the parcel are shown on the plan as being due North, South, East and West, and the boundaries on the ground may reasonably be assumed to be very nearly so, there can be no objection to this practice, except that such a description is always subject to any discrepancy on the ground in the survey referred to, and, for that reason, a description by metes and bounds is generally preferable.

When improper to describe land as "North half," etc.

In a great many cases, however, the boundaries of such a parcel are not due North, South, East or West and then the description fails to express the true intent of the conveyance in ninety-nine cases out of a hundred, since there can be no doubt, as a matter of technical description, that the North half of a parcel of land is all that part of such parcel, being one half of the total area thereof, which lies to the North of a due East and West line bisecting such parcel, whereas, in almost all cases, the intention is to convey a part which shall be bounded on the South by a line drawn parallel to and equidistant from the North-

Technical definition of "North half" of a parcel of land.

erly and Southerly boundaries thereof. This is most frequently found in descriptions of parts of city or town lots, and there are thousands of titles, in many registry offices, which are based on faulty descriptions such as the above, and which remain as a monument to the incompetence of the conveyancer and the examining staff of the registry office alike. However the general effect is not so serious as might be supposed; the intention of most of such titles is usually so manifest that it is accepted without question by the parties affected, or, if a dispute arises, it can generally be enforced by an order of a competent Court.

37. The rule is—"That no part of any original parcel of land should ever be described as the North, South, East or West part, as the case may be, unless such original parcel is quadrilateral and the boundaries thereof are due North and South or East and West."

Rule when land should not be described as "North" etc. part.

38. It is also quite common to find land described as "the Northerly one quarter" of a parcel of land. As the words "Northerly," "Southerly," "Easterly," and "Westerly" can only properly be used to indicate a general direction, and have no precise meaning, such a description is in the nature of a mere blunder. These words, used in the above sense, should never be used in any description of land.

Improper use of words "Northerly," etc.

Magnetic bearings never to be used in descriptions of land.

39. Magnetic bearings, or bearings that are derived from the Magnetic North Pole, should never, under any circumstances, be used in descriptions of land. One reason for this is that such bearings are incapable of being determined with a sufficient degree of precision—say within fifteen minutes. The chief reason, however, is that, for causes which have never been scientifically determined, the Magnetic North Pole is not constant, but varies from day to day and from year to year. This variation has been recorded at Paris in France as extending from $11\frac{1}{2}$ degrees East of true North in the year 1580 to $22\frac{1}{2}$ degrees West of true North in the year 1814—a total variation of 34 degrees.* It follows that bearings derived from the Magnetic North Pole vary accordingly, so that a line, the magnetic bearing of which was determined as being Magnetic North 10 degrees East in the year 1800, might quite possibly have a bearing of Magnetic North 5 degrees West in the year 1900. That is to say that, if it was attempted to re-establish the said line on the ground in the year 1900 from a known point of commencement and in reference to the magnetic bearing recorded for it in the year 1800, it would be 15 degrees in direction out of place. Therefore, since the principal object of a description of land is to establish a record from which it shall be

* Gillespies' Treatise on Surveying. Article 278.

possible to identify the described parcel on the ground, it will be seen that a description of land in which the direction of the various courses were referred to the Magnetic North Pole would fail to fulfil its purpose.

Description of the Remainder of an Original Parcel of Land

Definition of term "Original parcel of land." 40. "An original parcel of land" may be defined, for the purposes of this article, as any surveyed parcel of land, considered as an undivided whole, for which a separate title exists.

Definition of term "remainder." The remainder of an original parcel of land is that part which remains after one or more parts have been previously conveyed by description.

A remainder subject to all parts previously conveyed. 41. The description of a remainder depends not only on the original title to the whole of the parcel of which it is a part, but must also be made subject to the description contained in any existing title for the part, or parts, previously conveyed, and the rule may be stated as follows:—"The

Rule for description of a remainder. description of a remainder of any parcel of land must be expressed in terms of the remainder, in such a way as to be subject to the description contained in any existing title for a part, or parts, of said parcel which has been previously conveyed."

Object of rule. 42. The object of the above rule is to prevent confiction of description and title in conveying a number of small parcels of land by description out of what has been defined in section 38 as an

original parcel of land. Such confliction may assume the form of overlapping of adjacent boundaries, or the creation of small strips of land between such boundaries. It is generally caused by the acceptance as absolutely correct of the various measurements shown on plans of survey of the property, without allowing for the discrepancies to which all surveys are subject.

This discrepancy of survey, and of plans of survey, has already been referred to in section 24. Its lack of absolute accuracy constitutes an inseparable feature of the practice of surveying, and is a fact which must be accepted as such by all who have to describe land, and in the knowledge and constant consideration of which they must proceed. Its importance in relation to the description of land can scarcely be over-estimated, or emphasized too strongly. For instance, a quarter section of land may be shown on a departmental plan to be 40.00 chains square, and to contain 160 acres. We will suppose that the owner first sells "the South half" of said quarter section "containing 80 acres more or less" and subsequently proposes to sell the remainder. In this case the remainder can only properly be described as "the North half of said quarter section, containing 80 acres be the same more or less" since this is the only possible form of positive description that cannot conflict with

Discrepancies of survey must be taken into account in writing descriptions.

Example.

the description of the South half previously conveyed. But quite frequently the purchaser demands a transfer for "the North 20.00 chains of said quarter section containing 80 acres be the same more or less." Such a transfer generally is, and always should be, returned to him by the registrar of the district registry office as being unregistrable. Why? Because, in 99 cases out of 100, the measurements of the quarter section will not be found to be on the ground exactly as they are shown on the departmental plan. First let us suppose that the North and South boundaries are each exactly 40.00 chains in length, but that the meridian outlines are each 40.50 in length. Then the first parcel sold—namely the South half—was 40.00 by 40.25 chains and contained 81 acres,—the additional acres being accounted for in the original description by the use of the words "more or less." If then the second transfer, describing the remainder as the North 20.00 chains, be accepted by the registrar, there is left a strip of 25 links by 40.00 chains, containing 1 acre of land, still left in the original title. But the registrar has no other source of knowledge in regard to the actual size of the quarter section than that supplied by the departmental plan. If, therefore, he chooses to accept the second transfer for registration, he can only do so on the assumption that the measurements shown on

such plan are absolutely correct, in which case the two transfers, taken together, include all the land described in the original title, and the said title is cancelled in full accordingly. But we have seen that there is still one acre of land which is not included in either of the transfers and should still appear in the name, and on the title, of the original owner. The result is that the title to the said 1 acre becomes latent for the time being and is very often lost altogether to the original owner, because the owners of the "South half" and "the North 20.00 chains" respectively may, in perfectly good faith, occupy their respective properties on either side of a common fence and thus, in time, acquire a title through undisturbed possession.

Secondly, let us suppose that the North and South boundaries are still 40.00 chains in length, but that the meridian boundaries are each 39.50 chains in length,—or 50 links short. Then the first parcel sold was 40.00 by 19.75 chains and contained 79 acres. The second transfer, describing the remainder as the North 20.00 chains, includes the North 25 links of the first described parcel, or 1 acre of land for which the transferrer has no title and, in respect to which the title subsequently issued to the transferee is spurious;

As a further example let us take the case of a *Example*. city lot 50 by 100 feet of which the boundaries

are due North and South or East and West, and of which a part has been already conveyed by description as "the West 15 feet of said lot." Since the actual size of the above lot is determined by the position of its corner posts, and it may be either 49 or 51 feet wide on the ground in fact, although the plan of subdivision shows it to be exactly 50 feet, it would be incorrect to describe the remainder as "the East 35 feet of said lot" for the same reasons given in the preceding example. There are two ways of describing the remainder correctly:—

(a). To describe it as the whole of said lot saving and excepting thereout and therefrom the West 15 feet thereof.

(b). To describe it by metes and bounds in such a way as to exclude the West 15 feet; for instance—

"Commencing at a point on the South boundary of said lot distant 15 feet Easterly from the South West corner thereof; Thence North and parallel to the West boundary of said lot 100 feet more or less to the North boundary thereof; Thence East 35 feet more or less to the North East corner of said lot; Thence South along the East boundary of said lot 100 feet more or less to the South East corner thereof; Thence West 35 feet more or less to the point of commencement," or,

"Commencing at the North East corner of said lot; Thence West along the North boundary of said lot 35 feet more or less to a point distant 15 feet East of the North West corner thereof; Thence South and parallel to the West boundary of said lot 100 feet more or less to the South boundary thereof; Thence East, etc., etc."

Description by Exception of Previously Conveyed Parcels.

Definition of a description by exception.

43. A description by exception is one of an original parcel of land, out of which a part, or parts, have been conveyed by description, expressed in terms of the exceptions instead of in terms of the remainder.

Description by exception a negative description.

44. From the above definition it follows that a description by exception is a negative description as opposed to a positive or direct description of the land to be conveyed, and on this account is not so good a form of description as a description by remainder. At the same time the use of descriptions by exception is unavoidable in some cases and allowable in many others.

How descriptions by exception occur.

45. The creation of descriptions by exception occurs through the conveyance of small parcels which may make the remainder of the original parcel difficult to describe directly, or, at least, makes it easier to describe by exception. For instance, suppose the case of a quarter section of land from which a parcel has been conveyed by description that lies entirely within the boundaries of such quarter section, the parcel being connected with one of said boundaries by description

of a survey tie. This is a case in which it is impossible to describe the remainder otherwise than in terms of the excepted parcel.

46. It will often be found that a parcel of land has been conveyed out of an original title by a description which is so loosely worded and faulty as to be ambiguous. In all such cases it is most desirable that the remainder should be described by exception, since any ambiguity in the description of the part conveyed must necessarily be communicated to the remainder thus created.

It is true that to describe the remainder by exception perpetuates any ambiguity which may exist, but it must be remembered that the duty of the conveyancer is to describe that which actually remains, and if such remainder includes any ambiguity of title such ambiguity must be accounted for in the description.

Faults in titles cannot be eliminated by precise description of remainder.

In some cases a conveyancer will deliberately attempt, by precise description of the remainder, to rectify the ambiguity of title caused by a faulty description contained in a prior conveyance. Such an attempt is illogical and futile, because, if the ambiguity is of real effect it cannot be affected by the registration of an instrument subsequent to that of the one which caused it.

47. The title to an original parcel of land, out of which a great many small parcels have been conveyed by description frequently becomes ob-

Titles by exception of previously conveyed parcels often become obscure.

scure, and is only intelligible after many hours of careful work and plotting each of said small parcels, as they are described, on a plan of the whole.

This condition becomes greatly aggravated when the practice of describing exceptions from a title by reference to the number of the Certificate of Title issued for such exceptions is permitted by the Real Property Act of the province in which such land occurs.

Example.

Take as an example the following description:—
“The whole of section 4 in Township 14, Range 12 West of the 4th Meridian as the same is shown on a plan of survey of the said township approved and confirmed by the Surveyor General of Canada at Ottawa on the 17th day of January, 1907, which plan is of record in the Department of the Interior at Ottawa and in the Land Titles Office for the South Alberta Land Registration District saving and excepting thereout and therefrom:—

“Firstly:—All those portions of said section comprised within the limits of a plan of subdivision registered in said Land Titles Office under number 2066 in Day Book ‘M2’;

“Secondly:—A parcel of land containing One (1) and 77-100 acres be the same more or less being part of a public roadway as shown on a plan of survey of said roadway registered in said Land Titles Office under Road Plan number 279 and as described in Certificate of Title 14 Y.6.

"Thirdly:—All that portion containing 17 and 36-100 acres be the same more or less taken for the Right of Way of the Canadian Pacific Railway as shown on a plan of said railway filed in said Land Titles Office under Railway Plan Number 738 and as described in Certificate of Title 117 K.7.

"Fourthly:—All that portion of said section described in Certificate of Title 202 N.11," and so on until, in some cases, there are as many as twenty exceptions to which the original parcel referred to in the Certificate of Title is subject.

Such a description as the one contained in the above Certificate of Title is merely negative in effect. Instead of being a sufficient, complete and self contained description of the land included in the title, it depends for its validity on evidence contained in a number of instruments outside of itself. It defines the position and limits of the original parcel but, regarded as an individual document, conveys no assurance that any of such parcel is left after all the various exceptions have been satisfied.

The existence of every title of this kind is a source of danger and embarrassment to registrar and owner alike, because it is impossible to know just what it contains without doing a great deal of careful work which, however carefully done,

How to
remedy ob-
scure titles.

involves a greater risk of serious error than ordinarily good conveyancing should do.

The only possible remedy is simple but expensive and consists in taking the following three steps:—

(a). To have a survey made of the entire original parcel and each of the parcels conveyed thereout by description.

(b). To register a plan of such survey, showing clearly the boundaries of each and every excepted parcel and showing the portions still remaining in the title as numbered or lettered blocks.

(c). To make application to the registrar to cancel the existing title by exception and to issue instead thereof a new title for such numbered or lettered blocks, thus converting a negative title by exception into a positive title by direct description.

Descriptions of Railway Right of Way.

48. Descriptions of railway right of way should almost invariably be drawn so as to depend directly on a sufficient plan of survey—either attached to the instrument containing the description or of previous record. That is to say that no attempt should be made to describe the land by metes and bounds other than by reference to the centre line of the railway as shown on such plan.

Descriptions of railway right of way must depend on "sufficient" plan of survey.

The reason for the above statement may be found in the fact that the majority of right of way descriptions are complicated, as defined in section 13, in that the boundaries described consist of a succession of tangents and curves. Moreover these tangents and curves are actually surveyed and measured along the centre line of the railway, whereas the boundaries themselves, on which the corresponding tangents are of different lengths and the corresponding curves have different radii and lengths, are not surveyed at all, but calculated in reference to the survey of said centre line. It follows therefore that the measurements given in a description by metes and bounds of a right of way are calculated instead of having been measured on the ground, and are more subject to error than if taken from actual survey data.

Another objection to descriptions by metes and bounds of railway right of way is that it is not possible to realize the position of the land described without a plan, and, if the description be also made subject to a sufficient plan of survey there is no object in describing the land by metes and bounds at all, for the plan is then an integral part of the description. In fact any description of land in which the facts of survey on which it is based are presented in a dual manner, as in the case of a description by metes and bounds which is also made subject to a plan of survey, contains in itself this element of weakness—that any discrepancy between the measurements shown on the plan and those contained in the written description must often remain unaccountable. We have seen, for instance, that it is neither necessary nor desirable in describing a quarter section according to the departmental plan of survey of the township in which it occurs to refer to the measurements of its boundaries; or, in describing a town lot according to the plan of survey of the subdivision containing it to refer to the measurements of such lot.

49. Since descriptions of right of way must depend directly on the registered plan of survey of such right of way, it is essential that such plan shall be a "sufficient" plan of survey, as defined in section 5. Given such a plan it is usual to

describe right of way as shown in the following example:—"All that part of the South East *Example.* quarter of Section Twenty (20) in Township Forty-six (46) Range Twenty-three (23) West of the Fourth (4th) Meridian in the Province of Alberta as the same is shown on a plan of survey of said township approved and confirmed by the Surveyor General of Canada at Ottawa on the 14th day of May, 1894, which plan is of record in the Department of the Interior at Ottawa and in the Land Titles Office for the North Alberta Land Registration District at Edmonton in said Province which is taken for the Right of Way of the Canadian Pacific Railway and lies between two lines drawn parallel to and perpendicularly distant fifty (50) feet from and on opposite sides of the centre line of said railway as the same is shown on a plan of survey of said railway crossing said land and lands adjoining the same registered in said Land Titles Office under number 2037 in Day Book 'P' and as said railway is now constructed on the ground, the land herein described containing Six (6) and 66-100 acres more or less and as shown colored red on said plan of railway."

There are several points in the above description which are worth considering -

(a). Since railway right of way constitutes a special form of land titles, and the land conveyed is, as a rule, devoted to the one purpose, it may be

good practical conveyancing to describe right of way as being "taken for the Right of Way of the Canadian Pacific Railway" with a view to giving it general distinctive description. In theory however, the practice is incorrect. There is absolutely no difference between the title which a railway corporation acquires to its right of way and any other title to land, and to describe it in reference to its present or future use is as if a city lot were described as "being acquired for the purpose of erecting a livery barn thereon," which part of the description would be superfluous at any time and would become more apparently so if the land were used for some entirely different purpose.

(b). The words "crossing said land and lands adjoining the same" are necessary because, since the right of way is described in reference to the perpendicular distance of its boundaries from the centre line, the projection of said centre line beyond the actual boundaries of the parcel of land containing the right of way being described must be allowed for. For instance, suppose a point of curve of the centre line to fall exactly on a boundary between two parcels of land; there will then be a part of the boundary of the right of way in each of said parcels which will be neither parallel to nor perpendicularly distant fifty feet from the centre line as it is shown within the limits of said parcel.

(c). The words "and as such railway is now constructed on the grounds," or words to the same effect, are inserted by a good many corporation lawyers in the forms of transfer prepared by them for the use of railway companies, with a view to safeguarding the company from the effects of trespass committed through misdescription of its right of way. Owing to the insufficient character of many railway plans on which descriptions of right of way have been based, it is no infrequent occurrence for subsequent and more careful survey to reveal the fact that the land occupied and fenced in by the company does not agree with that described in its title;* i. e., that the company is trespassing, and it is this trespass which the use of the above words is intended to purge.

It is possible that the use of the above words may have something of the intended effect as against the owner of the land who executed the original transfer—he being still the owner of the remainder—in that such owner might conceivably be ordered by a court to fulfil the evident intention of the faulty transfer by executing a new one in lieu of it, but it is impossible to believe that the insertion of said words in a transfer, wherein the land also purports to be precisely described in reference to the measurements shown on a registered plan, can have any effect on the

* See section 18.

title that issues from said transfer. If the latter were the case, it would mean one of two things: either that the land conveyed was that occupied by the company at the date of the transfer, whether such occupation were determined by the theoretical width on either side of the centre of the actual track or in regard to the position of the fences—matters, in either case, which it would be impossible to establish the truth in regard to after a few years—or else it might be construed to mean that the land conveyed was that occupied by the company at any present time, or in other words that every time a portion of the track were re-constructed, a curve flattened or new fences erected the land conveyed by the title would vary accordingly, and would therefore be indeterminate.

In the absence of any judicial decisions on the point, either of the above alternatives appears to be preposterous.

It may therefore be accepted as an unestablished rule that the words "and as such railway is now constructed on the ground" should not be inserted in descriptions of right of way, and that, if they are so inserted in transfers, registrars should at least see that they are not included in the description of right of way contained in certificates of title issuing from said transfers.

(d). One difficulty in regard to the above form

of description is that it is practically impossible to include in such a description all the extra land which a railway company requires beyond its mere right of way for station grounds, wyes, sidings, extra wide cuts or fills, borrow pits, water tanks, snow fences or sheds or other purposes connected with the railway. The consequence is that separate descriptions have to be made for all these as occasion requires. With the exception of station grounds, all the extra land so required is generally of so small a monetary value that the company can hardly be expected to have a separate survey made of each—which survey would probably cost three or four times as much as the company is required to pay for the land itself—and the result is that these parcels are also described in reference to the position of the centre line. Such descriptions are often very involved but must be accepted as one of the weaknesses of the above form of description.

50. While the method of describing right of way referred to in the preceding section is almost universally employed at the present time, there is another method sometimes used which is distinctly better but has the one disadvantage that it requires a more complete survey of the land described. This method consists in showing the land required for all railway purposes as lettered blocks on the registered plan of survey of the right

Method of describing right of way as lettered blocks shown on plan.

of way, and describing them in the same way that city lots are described; i. e., without direct reference to any of the measurements shown on the plan but simply by reference to the lettered block considered as a separate parcel of land, and the registration marks of the plan. For instance:—

Example.

“All that part of the South East quarter of section Twenty (20) in Township Forty-six (46) Range Twenty-three (23) West of the Fourth (4th) Meridian in the Province of Alberta as the same is shown on a plan of survey of said township approved and confirmed by the Surveyor General of Canada at Ottawa on the 14th day of May, 1894, which plan is of record in the Department of the Interior at Ottawa and in the Land Titles Office for the North Alberta Land Registration District at Edmonton in said Province Being C. P. R. Block No. 1 containing Six and sixty-six hundredths (6 66-100) acres be the same more or less and as said Block is shown colored red on a plan of survey of the Canadian Pacific Railway right of way registered in said Land Titles Office under number 2037 in Day Book ‘P.’

One advantage in the above form is that it could be made to include all extra right of way shown on the original plan, either as part of “C. P. R. Block No. 1” or as “C. P. R. Blocks Nos. 2, 3, 4, etc.”

Another advantage is that it is somewhat shorter and more simple although it depends no more directly on the plan than the form in the preceding section.

Exception of Minerals in Descriptions of Land.

Land includes minerals underlying the same.

51. Since the theory of title to land is that such title includes not only the surface but all that underlies it, it follows that all mineral deposits underlying land would be included in a perfect allodial title to such land. As a matter of fact there are comparatively few such titles in existence. There are rare cases where grants for land have been issued by the Crown without any reservation whatever, as, for instance, some of the earlier grants issued by the Government of the Crown Colony of British Columbia, which conveyed all minerals—precious or otherwise. The Dominion Lands Act however, always excluded gold and silver from the rights conveyed by Crown Grant to land, and has also excluded coal and petroleum for some years past.

Land titles subject to reservations mentioned in Crown grants.

Thus we see that there are certain reservations and exceptions to most land titles created by the conditions of the original grant from the Crown. However, there are very many existing titles which include the base minerals, and it is frequently required to except coal for instance from the operation of a conveyance transferring the land which overlays it. This is effected by adding to the end

of the description contained in such conveyance the words "Saving and excepting thereout and therefrom all coal which may be in or under said land and the right to mine the same" or other words to that effect.

It will frequently happen that a person transferring land but retaining the coal rights will want to have included in the description articles of agreement as to his right of entry upon the land for the purpose of mining said coal. Such articles would constitute a restrictive covenant in the title and, therefore, should not be inserted in the description of the land to be transferred, but should be embodied in a separate form of agreement between the parties which could be registered against the title.

Restrictive
covenants in
descriptions
to be avoided.

NOTE.—If the fee simple of an entire parcel of land is transferred "saving and excepting thereout and therefrom all coal which may be in or under said land, etc." the apparent effect is to create a fee simple for the remainder—in this case the coal. This is of course impossible, but a separate title to the coal is certainly created in such a case. I am writing of the practice of conveyance by description as I know it to be—and the case stated is quite common practice—but my own opinion would be that it is improper to create a title for coal apart from the land which overlays it, and that all transactions in regard to coal should be in the form of lease and should follow the title to the land in the same way that an unredeemed

mortgage does. For instance it is my opinion that a vendor desiring to retain coal rights should transfer the coal with the land and receive back from the vendee a reciprocal lease of the coal rights to be registered against said vendee's title when issued.

Interpretation of Faulty Descriptions of Land.

52. A description of land should be drawn in such a way that it is capable of only one possible interpretation.

Unfortunately there are many descriptions of land which contain inherent errors in construction and in the mathematical data given in regard to the various boundaries of the land described, which nevertheless form the base of title to such land. It therefore becomes necessary to consider the question of how to interpret a faulty description in laying out, or otherwise dealing with, the land described or lands adjacent thereto. If the land conveyed by a faulty description is of sufficient value, and the parties affected cannot agree upon an interpretation of such description that is mutually satisfactory, it is often necessary to apply to the courts for an interpretation thereof. A Judge has power to take evidence into consideration and issue an order accordingly. In the case of registrars, conveyancers, surveyors and others who have occasion to deal with faulty descriptions, and who do not have the power of discretion vested in a Judge, it may be laid down as a general rule that "When dealing with a

Existence of faulty descriptions which are nevertheless bases of title.

Interpretation of faulty descriptions by a judge.

Descriptions to be followed in order of construction. faulty description it is only permissible to take into consideration the mere technical facts presented in the description as written in the order in which they are written."

Example.

53. For instance, suppose a part of a quarter section to be described as follows:—"Commencing at the North East corner of said quarter section; Thence South along the East boundary of said quarter section a distance of 2,000 feet to a point (A) Thence North $60^{\circ} 00'$ West a distance of 3,049 feet more or less to a point on the West boundary of said quarter section; (B) Thence North along said West boundary a distance of 376 feet more or less to the North West corner of said quarter section; (C) Thence East along the North boundary of said quarter section a distance of 2,640 feet more or less to the point of commencement."

On plotting the above description it will be found that when the position of the point (B) has been determined in accordance with the description of the course A-B, the distance from (B) to (C) is in reality 476 feet instead of 376 feet as described. The description is therefore faulty in that it will not close because the correlation of the various courses as described is mathematically impossible. Either the bearing of A-B is correct and the distance B-C as given in the description is wrong, or the distance B-C as given in the

description is correct and the bearing of A-B must be disregarded. Neglecting the possibility that both distance and bearing are incorrect, and following the general rule above stated, there can be no doubt that the bearing given for A-B must be accepted as correct, since the first two courses described are correct in themselves and are not subject to that which follows.

Of course there is a certain amount of internal evidence contained in such a description which may be strong enough to justify a departure from the general rule: For instance, supposing the distance given for A-B to have been 3,099.4 feet more or less, which equals cosecant $58^{\circ} 25'$ \times 2,640 and which would agree with the distance of 376 feet given for B-C, and that the area of the parcel is given as being 72 acres which would also agree with said distance, the weight of evidence would tend to disprove the correctness of the bearing given for A-B and to show that the distance of 376 feet given for B-C was correct.

As a matter of fact, in any case where the discrepancy is so marked as in the above example, it would be very unsafe to assume either interpretation of the description; the only proper course would be to remedy the description itself either by re-conveyance on the part of the registered owners of the land, or by obtaining an order of the court to that effect.

Departure
from general
rule some-
times justi-
fied by inter-
nal evidence
of description.
Example.

It may be noted that if the course A-B had been described so as to read "Thence North $60^{\circ} 00'$ West a distance of 3,049 feet more or less to a point on the West boundary of said quarter section distant 376 feet from the North West corner thereof," there would be no discrepancy, because the bearing, though incorrect, would be subject to the position of two clearly defined points and would be manifestly wrong.

Preamble of a Description of Land.

54. For use in all cases where it may seem advisable, the following is a good form of preamble which is sometimes used in descriptions of land:

"All and singular that certain parcel or tract of land and premises situate lying and being in the Province of Alberta in the Dominion of Canada comprising part of the South East quarter of Section Twenty (20) in Township Fourteen (14) Range Twelve (12) West of the Fourth (4th) Meridian as the same is shown on a plan of survey of said township approved and confirmed by the Surveyor General of Canada at Ottawa on the 14th day of May, 1894, and which may be more particularly described as follows, that is to say:—"

Form of preamble sometimes used.

In ordinary practice however, the use of such a form is cumbersome and unnecessary. For instance many Real Property Acts define the meaning of the word "land" in the interpretation clauses of the Act to mean "lands, messuages, tenement, and hereditaments, corporeal and incorporeal, of every nature and description, and every estate or interest therein, etc., etc." It follows, therefore, that when conveying land held under the provisions of such an act it is quite

Above form unnecessary in ordinary cases.

unnecessary to include the words "and premises."

General form
of preamble.

As a general rule it is quite sufficient to commence a description "All that portion of the South East quarter, etc."

Examples of Descriptions of Land with Explanatory Notes.

55. The following example is a description of a city lot together with an easement over the East 14 inches of the lot immediately adjoining the same on the West side thereof, which easement is created by the previous registration of a party wall agreement and is appurtenant to the lot described. The boundaries of both lots are shown to be due North and South or East and West on the registered plan of subdivision.

"The whole of Lot numbered Thirteen (13) in Block numbered Seventy-one (71) in the City of Calgary in the Province of Alberta in the Dominion of Canada as the same is shown on a plan of subdivision of a part of said City registered in the Land Titles Office for the South Alberta Land Registration District in said City under number 2133 in Day Book 'S' together with an easement over the East Fourteen (14) inches of lot numbered Twelve (12) in said Block for the purposes specifically mentioned in an

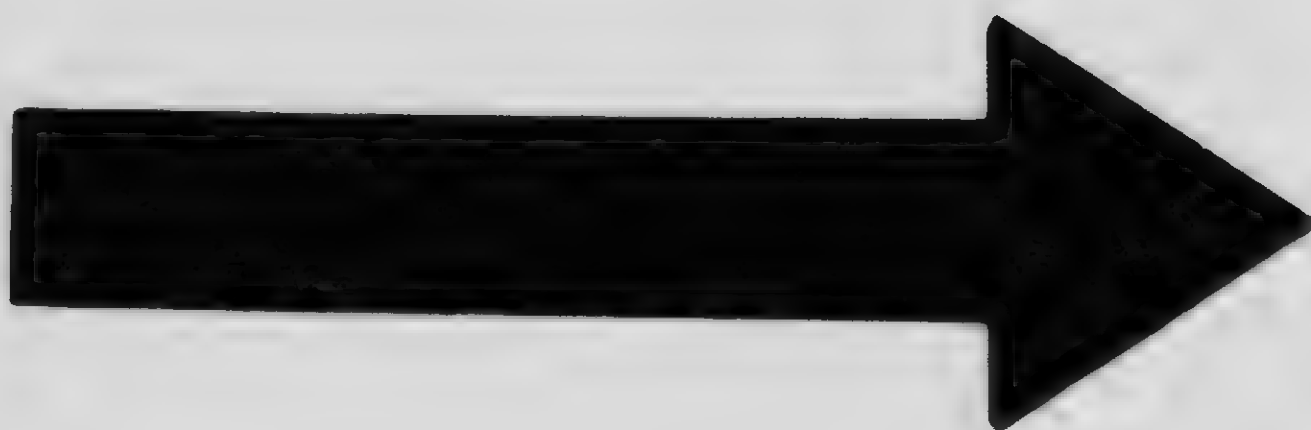
instrument registered in said Land Titles Office under number 249 in Day Book 'R'."

Notes.

(a). The effect of the registration of instrument 249 R was to register a charge or encumbrance against the Certificate of Title for Lot 12 and a corresponding entry on the Certificate of Title for Lot 13 making the easement appurtenant thereto.

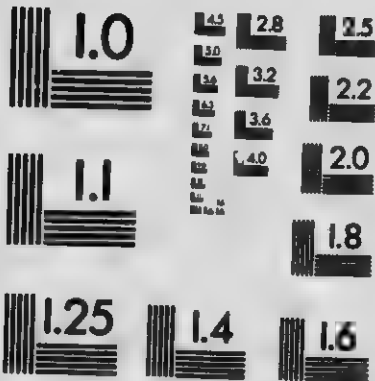
(b). In some cases conveyancers define the purposes and conditions of the easement in the body of the description, thus making the description more complete and self contained. I prefer the method of reference to the registered instrument creating the easement as eliminating all possibility of discrepancy between the terms of the easement as expressed in the description and as actually provided in the registered instrument. Also the terms and conditions mentioned in the registered instrument are frequently irrelevant to a description of land, and their inclusion in a description intended to be inserted in a Certificate of Title would tend to obscure the real facts of such title

56. The following example illustrates the partition by description of two city lots, and is based on the facts of an actual case:—



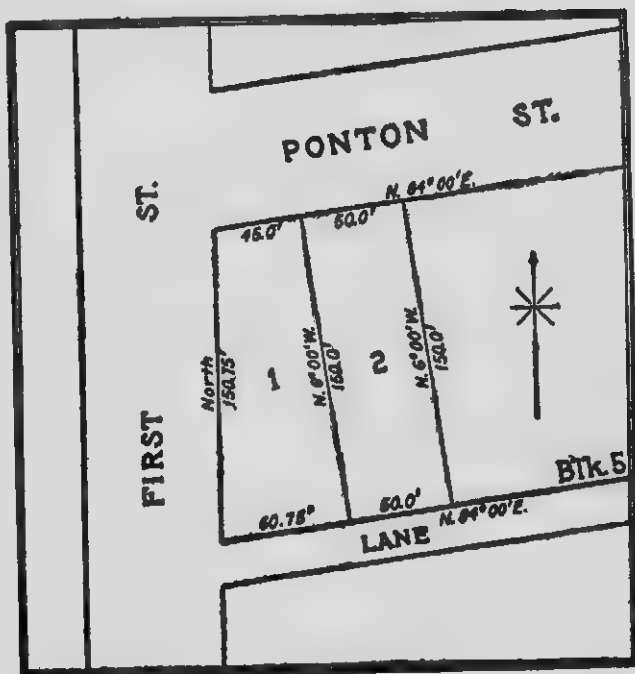
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Lots 1 and 2 as shown in the figure were originally owned by A. A first sold to B the part described as follows:—

“All those portions of Lots numbered One (1) and Two (2) in Block numbered Five (5) in the City of Edmonton in the Province of Alberta in the Dominion of Canada as the same are shown on a plan of subdivision of part of said city registered in the Land Titles Office for the North Alberta Land Registration District in said City

under number 14 in Day Book 'X' which may be more particularly described as follows:—

"Commencing at the North West corner of said Lot 1: Thence South along the West boundary of said lot Seventy (70) feet to a point; Thence Easterly and parallel to the Northerly boundaries of said lots 1 and 2 to a point on the Easterly boundary of said lot 2; Thence Northerly along said Easterly boundary to the North East corner of said lot 2; Thence Westerly along the Northerly boundary of said lots 2 and 1 ninety-five (95) feet more or less to the point of commencement."

A then sold to C "All these portions of Lots numbered One (1) and Two (2) etc., . . . which may be described as the most Southerly Eighty (80) feet throughout of said lots."

B erected a six story modern block completely covering the most Northerly 70 feet of said lots measured perpendicularly from the Northerly boundary thereof.

A discovered that the part sold by him to B as described above, only contained 69.6 feet measured perpendicularly from the Northerly boundary of said lots, and demanded payment for the remaining four-tenths of a foot.

On a careful resurvey of the lots being made it was discovered that they were two-tenths of a foot longer, measured along the First Street

frontage, than the measurement shown on the registered plan, and B was obliged, on advice of his counsel, to pay to A a sum of \$1,000, for the six-tenths of a foot still remaining in A's title.

Notes.

(a). The description of the part sold by A to B was a perfectly good description in itself, but was misunderstood by B and his agents. On the other hand it did not carry out the evident intention of the parties to divide the land into two parts having perpendicular depths of 70 and 80 feet respectively.

(b). It is important to note that all the parties involved were bound by the actual terms of the description contained in the transfer from A to B, in spite of A's evident intention to dispose of the whole of his property by the two transfers to B and C respectively, and in spite of the fact that the registrar had erroneously cancelled his title in full on the registration of the second transfer to C some years previously, and that A's title had therefore been latent for such time.

(c). The description of the land sold by A to C was loosely and incorrectly drawn, but its intent was admitted by both A and C to mean "the most Southerly 80 feet of the lots measured perpendicularly from the Southerly boundary

thereof. For a proper method of description of this part see Sections 41 and 42 (a) and (b).

57. In connection with the description of lots as shown on plans of subdivision of lands lying outside of, but comparatively near to, the limits of an incorporated city or town, it is very common practice to describe the whole subdivision by some high sounding name as a "suburb of" or "an addition to" such city or town. For instance:—"Lot numbered One (1) in Block numbered Forty-six (46) in Marlborough Heights being an addition to the townsite of Orwell as the same is shown, etc."

It is almost unnecessary to say that this practice emanates from real estate offices rather than from the law courts.

A subdivision within the limits of a city or town is a part of said city or town.

A subdivision outside such limits is not a part of such city or town. It is merely a subdivision of a parcel of land which may never be incorporated within the limits of an adjacent town and can only be properly identified by the legal description of the land itself. Moreover, it is not practically possible to establish a limit of distance beyond city limits within which a subdivision may be termed "an addition" or "a suburb", and when such a subdivision happens to be five miles beyond city limits, either of the above terms is

obviously misleading. Therefore the description of all lots situated in subdivisions outside the limits of an incorporated city or town should be described as follows:—

“Lot numbered One (1) in Block numbered Thirteen (13) as the same is shown on a plan of subdivision of part of the South East quarter of Section Fourteen (14) in Township Forty-one (41) Range Thirteen (13) West of the Fourth (4th) Meridian in the Province of Alberta in the dominion of Canada which plan is registered in the Land Titles Office for the North Alberta Land Registration District at Edmonton in said Province under number 7144 in Day Book ‘K.’”

58. The following example is a description of part of a quarter section bounded on the West and South by the boundaries of the quarter section, on the North by the High Water Mark of the North Saskatchewan River and on the East by the Westerly boundary of a registered townsite, which however does not extend to said High Water Mark:—

“All that part of the North West quarter of Section Twenty-three (23) in Township Forty-two (42) Range Fourteen (14) West of the Fourth (4th) Meridian in the Province of Alberta in the Dominion of Canada as the same is shown on a plan of survey of said township approved and confirmed by the Surveyor General of Canada at

Ottawa on the 18th day of July, 1907, which plan is of record in the Department of the Interior at Ottawa and in the Land Titles Office for the North Alberta Land Registration District at Edmonton in said Province and which may be more particularly described as follows:—Commencing at the South West corner of said quarter section; Thence Easterly along the Southerly boundary of said quarter section Eighteen hundred and sixty-four (1864) feet more or less to the intersection of said boundary with the Westerly boundary of Elm Street as the same is shown on a plan of subdivision registered in said Land Titles Office under number 4173 in Day Book 'AM'; Thence North along said West boundary of Elm Street, and said West boundary produced Northerly, Fourteen hundred and twenty (1420) feet more or less to the High Water Mark of the North Saskatchewan River; Thence Westerly and following said High Water Mark in an upstream direction to its intersection with the West boundary of said quarter section; Thence South along said West boundary One thousand and ninety-four (1094) feet more or less to the South West corner of said quarter section and point of commencement the part herein described containing approximately Fifty-three (53) acres be the same more or less."

Notes.

(a). All the distances in this description are "more or less" in accordance with the rule laid down in section 27.

(b). The acreage given is qualified by the use of the word "approximately" in accordance with the rule laid down in section 22.

59. The following example is a description of part of a quarter section bounded on the South by the right of way of the Grand Trunk Pacific Railway:—

"All that part of the North East quarter of Section Twenty-one (21) in Township Forty-nine (49) Range Seventeen (17) West of the Fourth (4th) Meridian in the Province of Alberta in the Dominion of Canada as the same is shown on a plan of survey of said township approved and confirmed by the Surveyor General of Canada at Ottawa on the 11th day of October, 1903, which plan is of record in the Department of the Interior at Ottawa and in the Land Titles Office for the North Alberta Land Registration District at Edmonton in said Province which lies to the North of the Northerly limit of the right of way of the Grand Trunk Pacific Railway as the same is shown on a plan of survey of said right of way registered in said Land Titles Office under number 14444 in Day Book 'L'."

Notes.

(a). No acreage is mentioned in the description because the description is not made subject to an explanatory plan of survey, nor is the acreage shown on the railway plan referred to, and, without the assurance afforded by a surveyors' certificate, a registrar would be justified in refusing to accept the conveyance if it showed a specified acreage, since he could have no means of knowing whether it was correct or not. (See Section 13.)

(b). A very common mistake is to describe such a parcel as the above as "lying to the North of the Grand Trunk Pacific Railway" without establishing the position of the railway by reference to a particular plan. Since there are probably at least two plans of such railway of record in the Land Titles Office, which do not as a rule agree exactly with one another, and since it is quite possible that the land actually occupied and fenced in by the railway company does not correspond with that shown on either plan, it follows that such a description is inadmissible in that it lacks clearness and definition.

60. It is frequently desired to describe the limit of a right of way as a boundary of a parcel of land before any sufficient plan of such right of way has been registered. In the Provinces of Manitoba, Saskatchewan and Alberta at least a

registrar must refuse to recognize the limit of a right of way as established until a sufficient plan of survey has been filed or registered, so that any absolute transfer of land based on the position of right of way—considered as such—would be unregistrable until such time. However, such descriptions are frequently required to be made for insertion in interim agreements of sale, etc., and the following example is a description by metes and bounds of the parcel otherwise described in the preceding section:—

“All that part of the North East quarter of Section Twenty-one (21) in Township Forty-nine (49) Range Seventeen (17) West of the Fourth (4th) Meridian in the Province of Alberta in the Dominion of Canada as the same is shown on a plan of survey of said township approved and confirmed by the Surveyor General of Canada at Ottawa on the 11th day of October, 1903, which plan is of record in the Department of the Interior at Ottawa and in the Land Titles Office for the North Alberta Land Registration District at Edmonton in said Province and which may be more particularly described as follows:—

“Commencing at the North East corner of said quarter section; Thence on an assumed bearing of due South along the Easterly boundary of said quarter section a distance of Eighteen hundred and thirty decimal point seven (1830.7)

feet to a point; Thence North $85^{\circ} 30'$ West a distance of Fifteen hundred and twenty-nine (1529) feet to a point; Thence on a curve to the right having a constant radius of Fifteen hundred and nineteen (1519) feet from a centre lying in a direction of North $25^{\circ} 00'$ East from the last mentioned point a distance of Three hundred and ninety-seven decimal point six seven (397.67) feet; Thence North $50^{\circ} 00'$ West a distance of Twelve hundred (1200) feet more or less to intersect the West boundary of said quarter section; Thence North along said West boundary Two hundred feet more or less to the North West corner of said quarter section; Thence due East along the North boundary of said quarter section Twenty-six hundred and forty (2640) feet more or less to the North East corner of said quarter section and point of commencement."

61. There is an example of an ordinary description of railway right of way given in section 49. As these descriptions only vary as to the land of which the right of way forms a part, the width of the right of way and the registration data of the railway plan on which they are based, no further example need be given here.

62. The following example is a description of additional right of way required by the railway company after it has acquired title to the right of way shown on its registered plan of survey of

the same; the preamble may be assumed to be the same as that given for the description contained in section 60:— "Commencing at the point of intersection of the Northerly limit of the right of way of the Grand Trunk Pacific Railway as said right of way is shown on a plan of survey thereof registered in said Land Titles Office under number 1167 in Day Book 'P' with a line drawn at right angles to the centre line of said railway as shown on said plan from a point distant Thirteen hundred and seven (1307) feet Westerly from the intersection of said centre line with the Easterly boundary of said quarter section; Thence Westerly and following said Northerly limit a distance of Six hundred and sixty (660) feet to a point; Thence North Easterly on a line drawn at right angles to the tangent to the curve at that point a distance of Sixty-six (66) feet to a point; Thence Easterly and parallel throughout to said Northerly limit a distance of Six hundred and sixty-one (661) feet more or less to a point distant Sixty-six (66) feet from the point of commencement in a line drawn at right angles to the said Northerly limit at that point; Thence in a straight line Sixty-six feet to said point of commencement the part herein described containing One (1) acre be the same more or less and as shown colored red on an attached copy of part of said plan."

(a). It will be noted that the above description

is not self contained but depends in a secondary manner on the plan of the survey of adjacent land. This constitutes a defect which is unavoidable unless a separate survey of the parcel is made, and a plan thereof attached to the description and made a part of it. As the value of the 1 acre contained is probably only \$15.00 or \$20.00, whereas the cost to the company of having a special survey made at an out of the way part of their line might easily amount to \$100.00, such descriptions of additional right of way are very commonly used.

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